

**REMARKS****Status Of The Claims**

The Office Action dated January 13, 2003, has been received and its contents carefully considered. Claims 2-9, 12-18 and 20-22 are pending. Claims 2-9, 12-18 and 20-22 have been rejected. Claims 2, 4, 8, 12, 14-15 and 20-22 have been amended. Claims 23-26 have been added.

Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

**OFFICE ACTION**

Claims 2-9, 12-18 and 20-22 were rejected under 35 U.S.C. § as being unpatentable over the admitted prior art in view of Howard. Without conceding the propriety of the rejection independent claim 4 has been amended. Additionally, independent claim 14 and 20 have been amended in a generally corresponding fashion. It is respectfully submitted that the admitted prior art does not teach, *inter alia*, a mechanical fluid level monitoring device for an incubator comprising “a mechanical liquid level gage mounted flush with a face of the incubator,” as recited in claim 4 (and similarly in claims 14 and 20).

The admitted prior art merely teaches a water jacket incubator having a control panel 11 which monitors an electrical signal of a closed grounding loop utilized as a signal relative electrical current and not the liquid level gage or measurement device. The control panel 11 senses an electrical signal with no true quantitative measurement being made. This is in contrast to the mechanical liquid level gage recited in claim 4 (and similarly in claims 14 and 20) as opposed to the control panel 11 of the prior art which operates electrically.

The Examiner further provides Howard to attempt to cure the deficiencies of the admitted prior art by incorporating the water gage 9 of Howard into the structure of the water jacket incubator taught by the admitted prior art. However, it is not clear how the Examiner's purported art combination would be successful since the control panel 11 of the admitted prior art is and works altogether differently than the water gage 9 of Howard, *i.e.* the electrical gage (of the admitted prior art) verses the water gage (of Howard). Additionally, in accordance with the M.P.E.P. the teaching or suggestion to make the claim combination and reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ 2d 1438 (Fed. Cir. 1991).

In accordance with the M.P.E.P. §2142, to establish a *prima facie* case of obviousness there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. The motivation to combine Howard with the admitted prior art is not clear since the technologies of a component purported to be incorporated from Howard into the admitted prior art are not in the same field of endeavor. Furthermore, Howard does not cure the deficiencies of the admitted prior art because it does not teach, *inter alia*, a mechanical liquid gage "mounted flush with a face of the incubator," as recited in claim 4 of the present invention (and similarly in claims 14 and 20).

In accordance with the M.P.E.P. §2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re: Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re: Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494 196 (CCPA 1970). Since the admitted prior art, alone or in

combination with Howard, does not teach or suggest all the claimed features withdrawal of the rejection is respectfully requested.

As mentioned above, independent claims 14 and 20 have been amended in a generally corresponding fashion as is amended independent claim 4. Hence, independent claims 14 and 20 are patentable over the cited prior art for at least the same reasons as is claim 4.

Claims 2-3 and 5-9 ultimately depend from independent claim 4 and are patentable over the cited prior art for at least the same reasons as is claim 4.

Claims 12-13 and 15-18 ultimately depend from independent claim 14 and are patentable over the cited prior art for at least the same reasons as is claim 14.

Claims 21 and 22 ultimately depend from independent claim 20 and are patentable over the cited prior art for at least the same reasons as is claim 20.

Newly added claims 23 and 24 depend from independent claim 20 and are patentable over the cited prior art for at least the same reasons as is claim 20.

Newly added claim 25 depends from independent claim 4 and are patentable over the cited prior art for at least the same reasons as is claim 4.

Newly added claim 26 depends from independent claim 14 and are patentable over the cited prior art for at least the same reasons as is claim 14.

## CONCLUSION

In view of the foregoing remarks, reconsideration and allowance of the application are believed in order and such action is earnestly solicited.

Should the Examiner believe that a telephone conference would expedite issuance of the application, the Examiner is respectfully invited to telephone the undersigned Patent Agent at (202) 861-1538.

Respectfully submitted,

BAKER & HOSTETLER LLP  
  
Marc W. Butler  
Reg. No. 50,219

Date: June 13, 2003  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5304  
Telephone: 202-861-1500  
Facsimile: 202-861-1783

**APPENDIX**

**VERSION WITH MARKINGS SHOWING CHANGES MADE  
IN THE CLAIMS**

**IN THE CLAIMS:**

Amend claims 2, 4, 8, 12, 14-15 and 20-22 as follows:

4. (Twice Amended) A mechanical fluid level monitoring device for an incubator, comprising:

a mechanical liquid level gauge[; and] mounted flush with a face of the incubator; and  
a scale disposed on said liquid level gauge[.]

[wherein said incubator is substantially rectangular in shape with a front door coincident with a plane which includes a front face of the incubator and  
wherein said incubator is a water jacket incubator.]

2. (Twice Twice Amended) The device of claim 4, wherein said liquid level gauge is disposed on a [said] front [fact] face of said incubator.

8. (Twice Amended) The device of claim 4, wherein said incubator further comprises, a front door coincident with a plane which includes a front face of the incubator coherein said liquid level gauge is visible when said incubator is closed.

14. (Twice Amended) A mechanical fluid level monitoring device comprising:  
mechanical means for monitoring a level of fluid;

means for adjusting the level of said fluid; and  
means for mounting the fluid level monitoring device into a [front] face of an incubator,  
wherein said monitoring device is mounted flush with said [front] face [and wherein said  
incubator is a water jacket incubator].

12. (Twice Amended) The device of claim 14, wherein said mechanical monitoring  
means is a mechanical liquid level gauge.

20. (Twice Amended) A method of mechanically monitoring a fluid level in an incubator  
environment comprising:

providing a mechanical liquid level gauge mounted flush with a face of the incubator;  
visibly monitoring a liquid level [in said incubator] through said mechanical gage by  
visibly measuring a maximum and a minimum liquid level of said incubator[;  
adjusting said liquid level in said incubator, wherein said incubator is a water jacket  
incubator].

21. (TwiceAmended) The method of claim 20, wherein said measuring [set] includes  
viewing a scale mounted flush on a front face of the incubator.

15. (Amended) The device of claim 13, wherein said measuring means is a scale  
mounted flush with [the front] a face of the incubator.

22. (Amended) The method of claim 21, wherein said incubator is a water jacket incubator and wherein said scale indicates a full marking and a fill marking to indicate a condition of [said] a water jacket.